

Volume 75, November 2020



The Newsletter

TABLE OF CONTENTS

No Interest on Interest for loans up to Rs. 2 Crore during Moratorium	2
Unless specifically extended for a good reason, stay by 'any court' automatically expires within a period of six months: Supreme Court	2
Admission Fee Paid for Membership of Stock Exchange is Capital Expenditure	3
Mirror Orders from foreign Court ensure welfare of Child in Transnational Child Custody Case: Supreme Court	4
Equalisation levy (Amendment) Rules, 2020	5
SEBI circular on contribution by Issuers of listed or proposed to be listed debt securities towards creation of "Recovery Expense Fund"	6
Other Important Updates	7
FAQ`s on Model Tenancy Act, 2020.....	8
The Occupational Health, Safety and Working Conditions Code, 2020: The Way Forward	10

No Interest on Interest for loans up to Rs. 2 Crore during Moratorium



Recently, the Ministry of Finance released a Scheme Letter titled –

“Scheme for grant of *ex-gratia* payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020)”

This comes after the Supreme Court directed the Central government to implement the interest waiver on loans of up to Rs 2 crore at the earliest. The object of the Scheme is to provide *ex-gratia* payments of difference between compound interest and simple interest for the period from 1st March, 2020 to 31st August, 2020 to borrowers in specified loan accounts. These payments are strictly *ex-gratia* in nature and do not constitute any legal, contractual or equitable liability of the Central Government.

The relief will be extended through financial institutions like banks, non-banking financial companies (NBFCs), NBFC - Micro Finance Institutions,

NABARD, housing finance companies, National Housing Banks, etc.

Borrowers in the segments -- MSME loans, education loans, housing loans, consumer durable loans, credit card dues, automobile loans, personal loans to professionals and consumption loans -- who have loan accounts which have (A) not been declared non-performing asset (NPA) as on February 29, 2020, (B) having sanctioned limits and outstanding amount not exceeding Rs 2 crore as on February 29, 2020, will be eligible under the scheme. This will also include any eligible accounts foreclosed during the said period.

The rate of interest has been fixed at the rates as on prevailing on February 29, 2020. The exercise of crediting such *ex-gratia* amounts in the accounts of eligible borrowers shall have been completed by November 5, 2020. Pursuant to such disbursement, the lending institutions may lodge their claim for reimbursement latest by December 15, 2020 with the designated officer(s)/cell at the State Bank of India.

Unless specifically extended for a good reason, stay by ‘any court’ automatically expires within a period of six months: Supreme Court

The Supreme Court (“Court”) in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. vs CBI**, while reiterating the legal position on expiry of stay orders, held that “Whatever stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, within the next six months, the trial Court is, on the

expiry of the first period of six months, to set a date for the trial and go ahead with the same.”

The judgment hinges from a fact that the Supreme Court in 2018, in the very same case at first held that “In cases



where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.”

However, Additional Chief Judicial Magistrate, Pune, instead of following the judgment in letter as well as spirit, stated that the Complainant should move an application before the High Court to resume the trial. The Magistrate in the order state that “The lower Court cannot pass any order which has been stayed by the Hon’ble High Court, Bombay with due respect of ratio of the judgment in ***Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. (2018) 16 SCC 299.***”

Admission Fee Paid for Membership of Stock Exchange is Capital Expenditure

In case of **BGSE Financials Ltd vs. Deputy Commissioner of Income Tax, Circle-1(1)(2), Bengaluru IT Appeal No. 3130 (BANG) OF 2018** the Hon’ble Income Tax Appellate Tribunal, Bangalore bench (“ITAT”) held that membership in stock exchange by assessee creates intangible right in its favour, hence it is a capital expenditure. Accordingly, depreciation is to be granted towards admission fees and processing charges.

The brief facts of the case are that the assessee is engaged in stock exchange operations. It paid Rs. 11,34,836/- to

The Court, hence, in the instant judgment reminded that in the pyramidal structure under the Constitution of India, the Supreme Court is at the Apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially. It further stated that orders such as passed by the Additional Chief Judicial Magistrate, Pune fly in the face of its previous judgment and it is expected that the Magistrates all over the country will follow the order passed by the Court in letter and spirit.

In view of this judgment, it essentially means that once the period of six-month is over, the trial courts may resume the proceedings without waiting for any other intimation, unless an express order extending the stay is passed. Naturally, no contempt proceedings would lie against the presiding officers of trial courts on having proceeded in terms of *Asian Resurfacing of Road Agency Pvt. Ltd. & Anr.* (supra).

MCX-SX stock exchange towards admission fees and processing charges and claimed the deduction u/s 37 of the Income Tax Act, 1961 (“Act”). In assessment order u/s 143(3), said admissions fees was disallowed as a capital expenditure. Before the Ld. CIT(A) the main contention was that admission fee was paid to do trading in shares and not to create any capital asset, hence the expenditures are revenue expenditures.

The Ld. CIT(A) treated the said admission fee as capital expenditure and allowed the depreciation thereon. The matter travelled to the Hon’ble ITAT and the main issue before the ITAT was that whether the

impugned expenditure where it is a capital expenditure or revenue?



The Hon'ble ITAT while dealing with the issue considered the expenditure as capital one and allowed the depreciation on the following counts:

1. As per Rule 20 of concerned stock exchange, acquisition of membership in stock exchange by the assessee creates intangible right in its favour, which was also transferable by nomination.
2. The membership of a stock exchange confers a valuable right on its holder to enjoy the rights and privileges of a trading member and

also to carry on the trade as a Member of the Stock Exchange.

3. Membership of a stock exchange not only has an element of permanency but also has the element of being a source of income and, therefore, it must be held to be in the nature of a capital asset.
4. Judgment of **Techno Shares and Stock Ltd. 327 ITR 323 (SC)** and **R.C. Cooper v. Union of India AIR 1970 SC 564, 591**, was considered by the Hon'ble ITAT wherein it is held that membership of a stock exchange is a 'capital asset'.

Mirror Orders from foreign Court ensure welfare of Child in Transnational Child Custody Case: Supreme Court

Hon'ble Supreme Court (**Court**) in the case of *Smriti Madan Kansagra vs Perry Kansagra* (Civil Appeal No. 3559 of 2020) applied the concept of 'mirror order' in case involving transnational custody of a child.

In a judgment passed on 28.10.2020, a 3-judge bench comprising Justices UU Lalit, Indu Malhotra and Hemant Gupta applied the said concept while allowing the custody of a child to a man located in Kenya.

The majority of Justices held that the father was entitled to the permanent custody of the child and allowed him to shift his son to Kenya. However, the court

imposed a condition that the father should obtain a 'mirror order' from Kenya.

Court emphasised that the object of a mirror order is to safeguard the interest of the minor child in transit from one jurisdiction to another, and to ensure that both parents are equally bound in each State.

Court further elaborated that the mirror order is passed to ensure that the courts of the



country where the child is being shifted are aware of the arrangements which were made in the country where he had ordinarily been residing. Further, Court held that such an order would also safeguard the interest of the parent who is losing custody, so that the rights of visitation and temporary custody are not impaired.

The Court also relied on Section 17(3) of the Guardians and Wards Act, which

requires due consideration to be given to the wishes of the child if the child is matured enough to determine his preferences as per intelligible differentia.

Justice Hemant Gupta dissented from the majority judgment to hold that the custody of the child should remain with his mother in Delhi.

Equalisation levy (Amendment) Rules, 2020

The Central Board of Direct Taxes (CBDT) vide **Notification No. S.O. 3865(E) [NO. 87/2020 dated 28th October, 2020]** has published the Equalisation levy (Amendment) Rules, 2020 to further amend the Equalisation levy Rules, 2016. These rules shall come into effect from October 28, 2020.



A new definition on “electronic verification code” has been inserted in the rules. It has been defined as a code generated for the purpose of electronic verification of the person.

Rule 4 relating to the “payment of equalisation levy” has been substituted and it states that the assessee or e-commerce operator who are required to deduct and pay equalisation levy shall pay the amount by remitting it into the Reserve Bank of India or in any branch of the State Bank of India or of any

authorised Bank accompanied by an equalisation levy challan.

Also, Rule 5 relating to “Statement of specified services or e-commerce supply or services” is substituted and it states that the statement required to be furnished under sub-section (1) or (2) of Section 167 of the Act shall be in Form No. 1, duly verified in the manner specified and may be furnished by the assessee or e-commerce operator in the following manner :- (i) electronically under digital signature; or (ii) electronically through electronic verification code. The statement in Form No. 1 shall be furnished on or before the 30th day of June immediately following that financial year.

The Principal Director-General of Income-tax (Systems) or Director General of Income-tax (Systems), for the purpose of ensuring secure capture and transmission of data, shall-

- lay down the procedure for electronic filing of Form No.1;
- lay down the data structure, standards and manner of generation of electronic

verification code for the purpose of verification of the person furnishing the said form;

- be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said form so furnished; and
- specify the manner of furnishing the revised statement required to be furnished under 167 (2) of the Act.

The sub-rules (2), (3) and (4) under Rule 8 has been substituted. The Form No. 1 related to “Statement of Specified Services or E-Commerce Supply or Services”, Form No. 3 related to “Appeal to the Commissioner of Income-tax (Appeals) Designation of the Commissioner (Appeals)” and Form No. 4 related to “Form of Appeal to the Appellate Tribunal” has been substituted.

SEBI circular on contribution by Issuers of listed or proposed to be listed debt securities towards creation of “Recovery Expense Fund”

SEBI had amended (i) Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, (ii) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and (iii) Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 regarding issuance and listing of Non-Convertible Debentures (NCDs).

SEBI has now introduced provisions related to creation of "Recovery Expense Fund" (REF) in order to enable Debenture Trustee(s) to take prompt action for enforcement of security in case of 'default' in listed



debt securities. With effect from January 01, 2021, the Issuers will be required to deposit an amount equal to 0.01% of the issue size subject to maximum of Rs. 25 lakhs towards REF with the Designated Stock Exchange. The Issuer shall be required to deposit cash or cash equivalent(s) including Bank Guarantees towards contribution to REF at the time of making the application for listing of debt securities.

The amount collected in the REF shall be used in the manner as decided in the meeting of the holders of debt securities. The existing Issuers whose debt securities are already listed on Stock Exchange(s) are being given an additional time period of 90 days to comply with this circular for creation of REF.

Other Important Updates

1. Standardization of timeline for listing of securities issued on a private placement basis

SEBI has issued a circular providing for uniform timeline for listing of securities issued on private placement basis, the said circular shall come into force from 1st December, 2020. SEBI has decided to stipulate the timelines in such a manner that the day of closure of issue will be considered as the 'T' day, the allotment of securities to be completed by 'T+2' trading days after receiving funds; the listing permission from the stock exchanges should be received by 'T+4' days. Further, in case of delay in listing of securities issued on a private placement basis beyond the timeline, the issuer will pay penal interest of 1 percent per annum over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing).

2. Mere filing of charge sheet by investigating authorities doesn't entitle the accused to a copy of the statement of interested parties

The Hon'ble Supreme Court in the case of Miss "A" v/s State of Uttar Pradesh, Cr. Appeal No.659/2020, negating the order of the Hon'ble Allahabad High Court has clarified that mere filing of charge sheet in a matter by the investigating authorities does not automatically entitle the accused to a copy of the statements made against him/her. A copy of the statement made by the complainant before the competent judicial magistrates under Section 164 of the Code of Criminal Procedure (herein

after referred to as CrPC), can only be supplied to the accused as per Section 208 of CrPC, when the competent magistrate takes cognizance of the matter before him/her and issues process to the accused.

3. Requirement to mention HSN codes on the invoices

Central Govt. vide Notification No. 78/2020 dated 15.10.2020 has mandated that all class of registered taxpayer under GST has to mention HSN code w.e.f. 01.04.2021 on the invoices issued by them. The small taxpayers having aggregate turnover in the preceding F.Y. upto Rs. 5 crore shall furnish 4 digit HSN code and in case of large taxpayers having turnover of more than Rs. 5 crore, 6 digit HSN code shall be required to be furnished. Further, on supplies made to unregistered persons, small taxpayers may not require to mention HSN code on invoice issued by it.

4. Option with respect to filing of GSTR-9 for F.Y. 2019-20 extended

Vide Notification No. 77/2020 dated 15.10.2020, the furnishing of annual return in Form GSTR-9 has been made optional for the FY 2019-20 for taxpayers whose aggregate turnover in a F.Y. does not exceed Rs. 2 crore. Earlier, this benefit was provided for the F.Y. 2017-18 and F.Y. 2017-18 which has now been extended to F.Y. 2019-20 as well.

5. Due date for filing GSTR-3B notified

Vide Notification No. 76/2020 dated 15.10.2020, the due date to file GSTR-3B by registered persons has been prescribed for each of months from October, 2020 to March, 2021 which

shall be 20th day of the month succeeding such month. Small taxpayers having aggregate turnover of upto Rs. 5 crore in the previous financial year, in the specified category of states shall furnish GSTR-3B on or before 22nd or 24th day of the of the next succeeding month, as the case may be.

6. Due date for filing GSTR-1 Notified

Vide Notification No. 75/2020 dated 15.10.2020 and Notification No. 74/2020 dated 15.10.2020, the due dates to furnish GSTR-1 by registered persons having aggregate turnover of

more than Rs. 1.5 crore in the preceding financial year or current financial year has been prescribed for months of October, 2020 to March, 2021 and it shall be 11th of the next succeeding month and the due dates to furnish GSTR-1 by registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or current financial year for the quarter October to December, 2020 shall be 13.01.2021 and for the quarter January to March, 2021 shall be 13.04.2021.

FAQ`s on Model Tenancy Act, 2020

The Ministry of Housing and Urban Affairs (herein after referred to as “MOHUA”) has prepared Draft Model Tenancy Act (herein after referred to as “MTA”), 2020.

1. Is there a centralised MTA?

No. The MOHUA has prepared a draft MTA for each state and union territory to draft a suitable state-wise or territory-wise tenancy Act.



2. Whether the landlord and the tenant can enter into a tenancy agreement orally?

No. The landlord and the tenant shall let or take on rent any premises only by an agreement in writing, which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement. (Section 4(1)).

3. Does the MTA establish a regulatory and quasi-judicial authority to decide on disputes relating to tenancy?

Yes. The District Collector or District Magistrate shall, with the previous approval of the State Government/Union territory Administration, appoint an officer, not below the rank of Deputy Collector, to be the **Rent Authority** within his jurisdiction. (Section 30).

4. Is there a separate court/forum under the MTA for filing of rent related disputes or the same are to be filed in the civil courts of appropriate jurisdiction?

The MTA confers power on the Additional Collector or Additional District Magistrate or an officer of equivalent rank to be the **Rent Court (Section 33)** under this Act within his jurisdiction. Further, the state government and union territory administration, in consultation with the jurisdictional High Court, may appoint the District Judge or Additional District Judge as **Rent Tribunal (Section 34)**.

5. Is there a fixed timeline in the MTA for disposal of a rental dispute?

Yes. The Rent Court and the Rent Tribunal shall dispose off every application and appeal, as the case may be, within a period of sixty days from the receipt of such application or appeal. The Rent Court and the Rent Tribunal shall record its reasons *in writing* in case, the application or the appeal is not disposed off in the prescribed period of sixty days (*Section 35 (2)*).

6. Does the jurisdiction of the Rent Court and the Rent Tribunal extend to the disputes of ownership and possession of the rental premises?

No. The jurisdiction of the Rent Court shall be limited to tenancy agreement submitted to it as specified in the First Schedule and shall not extend to the question of title or ownership of premises (*Section 40 (2)*).

7. Does the MTA legally binds the rental agents/brokers/property managers?

Yes. (*Section 19*) empowers the Rent Authority to remove the property manager or impose such costs on the property manager so as to compensate any loss incurred by the landlord or tenant.

8. Is there any provision for payment of rent in case the landlord refuses to take rent, refuses to give receipt or the tenant is not aware to whom to pay the rent to?

In case where the landlord refuses to any rent or refuses to give a receipt, the rent and other charges shall be paid to the landlord by postal money order or any other method, in such manner as may be prescribed, consecutively for two months, and if the landlord refuses to accept the rent and other charges within such period, then the tenant may deposit the same with the Rent Authority (*Section 14(1)*). Where the tenant is unable to decide to whom the rent is payable during the period of tenancy agreement, the tenant may, in such case, deposit the rent with the Rent Authority (*Section (14(2))*).

The Occupational Safety, Health and Working Conditions Code, 2020: The Way Forward

By Adv. Harsha Totuka and Adv. Dharmesh Khandelwal

The Parliament, in September 2020, passed 3 labour codes as part of the long overdue labour reforms promised by the present Government. The existing labour laws always fell short of coping with the ever-changing work environment and were one of the major reasons which affected the growth of Indian manufacturing sector. As a result, these reforms were considered essential to improve the competitiveness of the Indian industry and make it easier to do business in the country. While the exact date of the applicability of these new labour codes is yet to be decided, news reports suggest that the Government intends to implement these codes by on or before commencement of new financial year in April 2021. The draft rules of the Occupational Safety, Health and Working Conditions Code, 2020 (Central) have also been issued by the Government.

In our previous article, we had provided insight on the Industrial Relations Code, 2020. This article focuses on the Occupational Safety, Health and Working Conditions Code, 2020 ("**OSH Code**"). The OSH Code aims to amalgamate, simplify and rationalize the 13 labour laws relating to safety, health and working conditions; to reduce the compliance burden on infant industries; and to promote their economic growth. It includes laws in relation to factories, dock workers, building and other construction workers, plantation labour, contract labour, inter-state migrant workers, working journalists and other newspaper

employees, motor transport workers, sales promotion employees, beedi and cigar workers, cine workers and cinema theatre workers.



The OSH Code provides for both general provisions and special provisions for specific types of workers. The general provisions apply to employer of any establishment and includes provisions on registration, filing of returns, occupational safety health and working conditions, and duties of employers. The special provisions apply to employers employing specific type of workers such as those in factories and mines, audio-visual workers, journalists, sales promotion employees, contract labour and construction workers.

In this context, the key changes brought in by the OSH Code are as follows:

1. **Changes in Definitions:** Compared to the previous labour laws, there have been some key changes in various definitions under the OSH Code. These changes, by increasing accountability and coverage, seek

to ensure proper implementation of the OSH Code and provide equal benefits to all types of employees.

- (a) Principal employer and employer: For more accountability, the definition of 'principal employer' has been revised to include the manager of the establishment. Further, the definition of 'employer' has also been expanded to include contractor, the legal representative of deceased employer, occupier as well as the person who has the ultimate authority over the establishment including the manager and the managing partner.
- (b) Inter-state migrant worker and audio-visual productions: To ensure proper distribution of benefits, the definition of 'inter-state migrant worker' has been revised under the OSH Code. According to the revised definition, an interstate migrant worker is a person who has either been recruited directly by the employer in another state or who has come on his own from one state to another to obtain employment and does not draw wages for more than Rs. 18,000/- per month. Further, to cope up with the rise of the various new age OTT (Over the top) platforms and diverse shows, the definition of 'audio-visual productions' has also been expanded to include films, web-based serials, talk shows, reality shows and sports shows.
- (c) Worker and employee: The Code defines the terms 'worker' and 'employee' separately. The definition of 'worker' has been

expanded to include a person in supervisory capacity and working journalist, sales promotion employees and any person doing manual, unskilled, skilled, technical, operational, clerical work and draws salary up to Rs. 18,000/- per month. 'Employee' is a broader definition which includes a person employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work.

Chapter V which talks about health and working conditions refers to 'employees' whereas Chapter VII which deal with working hours etc. refer to 'workers'. Chapter VI relating to welfare provisions at times refers 'employees' and at times to 'workers'. Due to such differential usage, it is important that while interpreting the provisions of OSH Code, the differentiation between terms 'worker' and 'employee' is carefully perceived.

- 2. Registration, License and Applicability:** The establishments covered under the OSH Code are required to get registered within 60 days of commencement of the Code. If any establishment is already registered under the existing labour laws, then, only the proof of the registration is required to be provided. Apart from registration, establishments such as factories, establishment engaging contract workers, mines, and industrial premises for beedi

and cigar workers also require a license under the OSH Code.

The OSH Code has taken a big step towards reducing administrative complexities and creating an environment wherein small business can flourish. *First*, only one registration is required for all establishments and a common license can be taken for factory(ies), employing contract labourers and, beedi and cigar industrial premises. Further, as per the draft rules of the OSH Code, an all-India license can also be taken by contractors having PAN-India presence.

Second, the threshold for applicability of the OSH Code has been revised for factories and contract labourers. The applicability of the OSH Code is now reduced to factories involved in manufacturing activity and having 40 workers (without the aid of power) and 20 workers (with the aid of power) instead of 20 and 10 respectively. The applicability for establishments and contractors employing contract labourers has also been increased to 50 contract labourers in any day of the preceding 12 months from 20 contract labourers previously. In some states like Rajasthan and Odisha, the applicable threshold limit had already been increased. The Economic Survey (2018-19) noted that increased thresholds for certain labour laws in Rajasthan resulted in an increase in growth of total output in the state and total output per factory. Therefore, this measure is a step forward towards reducing administrative

complexities for all establishment and allowing small businesses to flourish.

It is also to be noted that under earlier regime, provisions of Factories Act, 1948 were applicable to factories, i.e. entities carrying out manufacturing process; whereas most of the general provisions under OSH Code apply to every employer of an establishment. An establishment, under the OSH Code, includes a place where any industry, trade, business, manufacturing or occupation is carried on and in which 10 or more 'workers' are employed. Thus, even a non-manufacturing establishment, e.g. IT firms, accounting firms etc., having 10 or more 'workers' would be required to take registration under the OSH Code and comply with provisions thereunder such as maintaining health, safety and working conditions etc. It is worthwhile to mention that applicability threshold is based on 'workers' and not 'employees' and thus, the distinction between the two terms is of utmost importance.

3. Safety, Health and Welfare Conditions: The OSH Code provides two types of duties to ensure a safe and healthy workplace environment. *First*, it provides for general duties of every employer irrespective of its nature of establishment. *Second*, it provides for establishment wise specific duties of the employer towards their workers. The general and specific safety, health and welfare duties mainly include the duties provided in the previous

labour laws. These duties include the duty to ensure that the workplace is safe and without any risk, and proper welfare facilities are provided to the employees. With respect to the previous duties incorporated in the OSH Code, the threshold to provide a canteen, creche, first aid and welfare officer has been revised. Now, an employer is required to setup a canteen if 100 employees are employed at an establishment (earlier ranged from 100 to 250), for creche, only 50 workers are required (earlier ranged from 20 to 50 female workers), first aid is now required for all establishment (earlier in selected establishment) and a welfare officer for factory/mines/ plantation is required if 250 employees are working (earlier ranged from 300 to 500). Some of the additional duties brought in by the OSH Code includes duty to provide free annual health check-up to all its employees and ensure proper disposal of waste including e-waste. As per the draft rules of the OSH Code, annual health check-up should be conducted within 120 days from the commencement of every calendar year and is required only for those workers who have completed 45 years of age. Further, the OSH Code also takes a step towards formalisation of work by making issuance appointment letter mandatory for all employees and duty to issue experience certificate, on demand, by the contractor to contract labourers. The format for both the appointment letter and experience certificate is provided in the draft rules of the OSH Code.

4. **Contract Labourers:** In the past few years, labour compliance and economic considerations have resulted in increased use of contract labour which has resulted exploitation of contract labourers as they have been denied basic protections. As per the Annual Survey of Industries, contract workers in factories among total workers increased from 26% in 2004-05 to 36% in 2017-18, while the share of directly hired workers fell from 74% to 64% over the same period.

To resolve this issue, two measures have been introduced under the OSH Code. *First*, a new concept of core activity has been introduced in the OSH Code. This concept has been borrowed from countries such as Indonesia and Brazil. Further, the state of Andhra Pradesh also had this provision of core activity. According to the OSH Code, no establishment, except provided in the Code, can use contract workers in their core activity. Core Activity is any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity.

The appropriate government will decide whether an activity is a core activity of the establishment or not. The OSH Code also states a list of activities which will not be considered as core activity unless the establishment is set up for the purpose doing the activities provided in the list. These activities include sanitation, courier, loading

unloading, security services and other mentioned in the Code.

Second, the principal employer will now be liable for providing welfare facilities and payment of wages to the contract labourers and if any principal employer has employed a contractor which is not licensed, then the principal employer will be deemed to be in contravention of the OSH Code.

Further, as per the draft rules of the OSH Code, a contractor, while applying for a license, also needs to provide a Bank Guarantee for an amount calculated at the rate of Rs. 1000/- for each of the worker to be employed as contract labourer. All these measures will help in providing basic protections to contract labourers.

- 5. Inter-state Migrant workers:** The plight of migrant workers was one of the most highlighted issues during the lockdown. The OSH Code has taken steps towards improving the conditions of inter-state-migrant workers. As per the OSH Code, any inter-state migrant worker can now avail the benefits of public distribution system in the state of employment. They have the right to avail the same benefits provided to other workers in an establishment such as the provident fund and insurance benefits. The inter-state workers working in a construction site can avail benefits available under the building and other construction cess fund in the employment state. The OSH Code also directs the employer(s) to provide a lump sum to and fro travel allowance, in a

year, for visiting the native state of the inter-state migrant worker(s).

- 6. Appropriate government:** As per the OSH Code, the Central Government will act as an appropriate government for all or any public sector undertaking (“PSU”) even if the share of the government is less than 50% in the PSU. The central government will also control some other industries specifically mentioned in the OSH Code such as railways, mine, ports, oil fields, air transport, telecommunications, banking and insurance. For the rest, the respective state government will act as an appropriate government.
- 7. Working Hours and Holiday:** As per the draft rules of the OSH Code, the period of work in a single day can be upto 12 hours including intervals of rest. However, the exact working hours for a worker cannot be more than 8 hours a day and 6 days in a week. These hours differ for a working journalist and a motor transport worker. Every worker who has worked 180 days or more in a calendar year is entitled for 1 day paid leave for every 20 days of his work in such calendar year. Further, adolescent and mine worker is entitled to 1 day leave in every 15 days.
- 8. Inspector-cum-facilitator:** A novel enforcement authority of chief inspector-cum-facilitator and inspector-cum-facilitator has set up by the OSH Code. The major duties of Inspector-cum-facilitators include conducting inspection,

inquiring into accidents, and sensitise employers.

9. **Power of exemption:** To protect small, vulnerable and new industries, the OSH Code provides the appropriate government, by notification, with the power to exempt any new or any establishment or class of establishment from any or all of its provisions in public interest or emergency or to promote economic activity. These exemptions cover a wide range of provisions such as those related to hours of work, safety standards, retrenchment process, collective bargaining rights, contract labour. The appropriate government can exercise this power to exempt for any period of time. This is a wide discretionary power given to the government compared to the earlier labour laws such as the Factories Act, 1948 which permitted exemptions from its provisions only in cases of public emergency and limited such exemption to a period of 3 months.
10. **Technological adaption:** The Code is in line with the government focus towards use of technology in governance. Under the OSH Code, all the licenses, registration, notice, maintenance of register, inspections, certificates and filing of returns can be done electronically. This is step forward towards transparency in governance.
11. **Women Empowerment:** As a step towards women empowerment, women have now been allowed to work before 6 a.m. and beyond 7 p.m. with their consent. The OSH Code also allows women to work in hazardous and dangerous operations with their consent and subject to all the safety conditions being fulfilled.
12. **Jurisdiction:** The OSH Code removes the jurisdiction of civil courts from hearing matters related to it. Any person aggrieved by the order of the Inspector-cum-facilitator or Chief Inspector-cum-facilitator has the right to appeal directly at the respective high court.
13. **Penalty:** The OSH Code provides for both general and specific penalties for different types of violations and continued violations. It has also introduced compounding of certain offences by the officer of the appropriate government. The penalties can be compounded to the extent of 50% percent of the maximum penalty and fines can be compounded to the extent of 75% of the maximum fine.

Overall, the OSH Code has taken a balanced approach towards all the stakeholders and has retained the flexibility to change in tune with emerging technologies. On one hand, it has tried to protect workers by expanding the scope of some definitions and providing

them better working conditions, and, on the other hand, it has also tried to create an environment where business can flourish by increasing the threshold of applicability and removing administrative complexities. One can hope that in the long run, the OSH Code will have positive impact on the Indian economy by promoting ease of doing business and bringing transparency and accountability in the enforcement of Labour Laws.



WE ARE ON THE
WEB

www.chiramritlaw.com

For any queries regarding
'THE NEWSLETTER', please get in
touch with us at:
newsletter@chiramritlaw.com

Disclaimer:

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication.

Reach us at:

Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015 Off: +91-141-4044500

Surat- 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat— 395007

New Delhi- 301-302, 3rd Floor, Good Earth City Centre, Sector-50, Gurugram, Haryana - 122018

Mumbai- G-4, Ground Floor, Court Chambers, 35 Sir Vitthaldas Thackarsey Marg, New Marine Lines, Mumbai, Maharashtra - 400020